

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

SILVERCREEK MANAGEMENT INC., *et al.*,

Plaintiffs,

v.

CITIGROUP, INC., *et al.*,

Defendants

02-cv-08881-JPO

ORAL ARGUMENT REQUESTED

**THE FINANCIAL INSTITUTIONS' NOTICE OF MOTION TO DISMISS THE  
SILVERCREEK PLAINTIFFS' THIRD AMENDED COMPLAINT (ECF 10-115)**

PLEASE TAKE NOTICE that, upon the annexed Third Amended Complaint in the above-captioned action, dated August 11, 2011<sup>1</sup>; the Financial Institutions' Joint Memorandum of Law in Support of Their Joint Motion to Dismiss the Silvercreek Plaintiffs' Third Amended Complaint; the accompanying Declaration of David H. Korn, executed on July 29, 2016, with the exhibit thereto; Credit Suisse's Separate Memorandum of Law in Support of the Financial Institutions' Joint Motion to Dismiss the Silvercreek Plaintiffs' Third Amended Complaint; the Deutsche Bank Defendants' Separate Memorandum of Law in Support of the Financial Institutions' Joint Motion to Dismiss the Silvercreek Plaintiffs' Third Amended Complaint and the accompanying Declaration of Linda Regis-Hallinan; and upon all prior papers and proceedings herein, Defendants Credit Suisse First Boston (USA), Inc. (n/k/a Credit Suisse

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<sup>1</sup> A courtesy copy of the exhibits to the Third Amended Complaint will be provided to the Court on compact disk when the motion is fully briefed, *see Individual Practices in Civil Cases, Rule 2.C*, and will be provided in printed format upon request.

(USA), Inc.), Credit Suisse First Boston LLC (n/k/a Credit Suisse Securities (USA) LLC) and Pershing LLC (f/k/a Donaldson, Lufkin & Jenrette Securities Corporation) (together, “Credit Suisse”), Deutsche Bank Alex. Brown Inc. (n/k/a/ Deutsche Bank Securities Inc.) and Deutsche Bank AG (together, “Deutsche Bank”) and Merrill Lynch & Co., Inc. (“Merrill Lynch”) (collectively, the “Financial Institutions”), by and through their undersigned counsel, hereby move this Court, before the Honorable J. Paul Oetken, United States District Judge, at the Thurgood Marshall United States Courthouse, 40 Foley Square, New York, New York, for an order, pursuant to Rules 9(b) and 12(b)(6) of the Federal Rules of Civil Procedure, dismissing with prejudice Counts One (Aiding and Abetting Fraud as against all Financial Institutions), Two (Conspiracy to Commit Fraud as against all Financial Institutions), Three (Aiding and Abetting Negligent Misrepresentation as against all Financial Institutions), Four (Fraud and Deceit as against Merrill Lynch and Credit Suisse), Five (Negligent Misrepresentation as against Merrill Lynch and Credit Suisse), Six (Violations of Section 11 of the Securities Act as against Deutsche Bank and Credit Suisse), Eight (Violations of Section 12(a)(2) of the Securities Act as against Credit Suisse), and Nine (Violations of Article 581-1 *et seq.* of the Texas Securities Act as against Deutsche Bank and Credit Suisse) of the Silvercreek Plaintiffs’ Third Amended Complaint; and granting such other and further relief as this Court may deem just and proper.

August 5, 2016

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TO ALL COUNSEL OF RECORD

Via ECF